

Message Text

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ACTION L-03

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FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 2694

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E.O. 11652: N/A

TAGS: EFIN, PGOV, PFOR, CS

SUBJECT: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD;
FOREIGN LAWS ON QUESTIONABLE PAYMENTS

REF: STATE 94647

1. THE FOLLOWING ARE THE ANSWERS TO THE QUESTIONS POSED
IN REFTTEL:

A. YES. ARTICLE 338 THROUGH 345 OF THE PENAL CODE
OF COSTA RICA PUNISHES BOTH THE OFFER AND THE RECEIPT OF
THINGS OF VALUE, GIVEN OR RECEIVED TO INFLUENCE OFFICIAL
ACTION OR INACTION.

B. NO. IN COSTA RICA IT IS PROHIBITED TO FORCE ANYONE
TO TESTIFY AGAINST HIMSELF. ARTICLE 239 OF THE PENAL
CODE MAKES IT AN OFFENSE TO ISSUE STOCKS OR BONDS
WHILE CONCEALING MATERIAL FACTS OR CIRCUMSTANCES, BUT
THIS ARTICLE HAS NOT BEEN INTERPRETED TO REQUIRE DISCLOSURE
OF PAYMENTS MADE TO GOVERNMENT OFFICIALS. WHILE ARTICLE
239 MIGHT APPEAR TO BE RELEVANT, A COSTA RICAN LEGAL
EXPERT EXPLAINS THAT A PERSON COULD NOT BE PROSECUTED
UNDER THIS ARTICLE FOR FAILING TO DISCLOSE A BRIBERY
UNLESS THE GOVERNMENT COULD PROVE THAT A BRIBERY
TOOK PLACE. IF PROOF OF BRIBERY EXISTED, THE PERSON,
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UNDER THE COSTA RICAN LEGAL SYSTEM, WOULD BE PROSECUTED

FOR BRIBERY RATHER THAN UNDER ARTICLE 239.

C. NO. ARTICLE 100 (J) OF THE LAW OF FINANCIAL ADMINISTRATION PROVIDES THAT GOVERNMENT PURCHASES AND CONTRACTS VALUED AT MORE THAN 5,000 COLONES MUST BE ACCOMPLISHED THROUGH PUBLIC TENDER BY THE PROVEEDURIA NACIONAL. AGENTS ARE PERMITTED TO BID, BUT IF AWARDED CONTRACTS THEY MUST FULFILL THE CONTRACTS AND CANNOT TRANSFER THEM NOR ANY INTEREST IN THEM, TO ANY OTHER PERSON WITHOUT THE PERMISSION OF THE PROVEEDURIA NACIONAL AND THE CONTROLLER GENERAL. ARTICLES 101-102 OF THE SAME LAW PROVIDE THAT PUBLIC OFFICIALS AND THEIR RELATIVES MAY NOT PARTICIPATE IN TENDERS. IT SHOULD BE NOTED, HOWEVER, THAT THIS PROVISION CAN EASILY BE CIRCUMVENTED BY FORMATION OF CORPORATE ORGANIZATION THAT IS COMMON IN COSTA RICA.

D. NO.

E. ILO.

F. YES. AN EXPERT ON CRIMINAL LAW HERE STATES THAT PAYMENT OF KICKBACKS IN CONNECTION WITH COMMERCIAL TRANSACTIONS NOT INVOLVING GOVERNMENT OFFICIALS OR AGENCIES COULD BE PROSECUTED UNDER THE GENERAL FRAUD STATUTE ARTICLE 216 OF THE PENAL CODE.

2. THE FOREGOING INFORMATION IS BASED ON RESEARCH DONE BY THE EMBASSY IN THE PENAL CODE AND COMMERCIAL CODE OF COSTA RICA AND OTHER POSSIBLY RELEVANT LAWS. THE EMBASSY HAS ALSO CONSULTED THE SUPREME ELECTORAL TRIBUNAL AND POLITICAL AND BUSINESS LEADERS HERE. WE HAVE ALSO DISCUSSED THE QUESTIONS GENERALLY WITH A NOTED COSTA RICAN EXPERT ON CRIMINAL LAW AND HAVE REFLECTED HIS VIEWS IN OUR ANSWERS. THE EMBASSY DID NOT FEEL THAT IT WAS IN A POSITION TO SEEK WRITTEN OPINIONS FROM HIM OR ANY OTHER COSTA RICAN LAWYER WITHOUT BEING IN A POSITION TO PAY A LEGAL FEE. THE EMBASSY IS KEEPING A COPY OF THE CRIMINAL CODE OF COSTA RICA AND A XEROX COPY OF THE LAW OF FINANCIAL ADMINISTRATION.

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